

Approved as Submitted: November 17, 2004

**CITY OF MORGAN HILL  
JOINT SPECIAL AND REGULAR CITY COUNCIL  
AND SPECIAL REDEVELOPMENT AGENCY MEETING  
MINUTES – NOVEMBER 3, 2004**

**CALL TO ORDER**

Mayor/Chairman Kennedy called the special meeting to order at 6:00 p.m.

**ROLL CALL ATTENDANCE**

Present: Council/Agency Members Sellers, Tate and Mayor/Chairman Kennedy  
Late: Council/Agency Member Carr (arrived at 6:30 p.m.)  
Absent: Council/Agency Member Chang

**DECLARATION OF POSTING OF AGENDA**

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

***City Council and Redevelopment Agency Action***

**CLOSED SESSIONS:**

City Attorney/Agency Counsel Leichter announced the below listed closed session items:

**1.**

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Authority: Government Code Sections 54956.9(b) & (c)  
Number of Potential Cases: 4

**2.**

**CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Authority: Government Code Section 54956.9(a)  
Case Name: General Lighting Service, Inc. v. Wells Construction, City of Morgan Hill, et al.  
Case Number: Santa Clara County Superior Court, 1-04-CV-025561

**3.**

**CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Authority: Government Code Section 54956.9(a)  
Case Name: Halstead Drywall, Inc. v. Wells Construction, City of Morgan Hill, et al.  
Case Number: Santa Clara County Superior Court, 1-04-CV-026030

**4.**

**CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Authority: Government Code Section 54956.9(a)  
Case Name: The Don Chapin Company v. Stevelle Construction, City of Morgan Hill, et al.  
Case Number: Santa Clara County Superior Court, 5-04-CV-000790

### **OPPORTUNITY FOR PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

### **ADJOURN TO CLOSED SESSION**

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:03 p.m.

### **RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 6:58 p.m.

### **CLOSED SESSION ANNOUNCEMENT**

City Attorney/Agency Counsel Leichter announced that authority was given to defend the City in cases 2, 3 and 4 as listed on the agenda.

### **SILENT INVOCATION**

### **PLEDGE OF ALLEGIANCE**

Mayor Kennedy announced that Mikayla Lacerda was serving as Mayor for the Day. At the invitation of Mayor/Chairman Kennedy, Mayor for the Day Lacerda led the Pledge of Allegiance.

### **PROCLAMATIONS**

Mayor Kennedy and Mayor for the Day Lacerda presented David Wilson a proclamation declaring November 21–27, 2004 as *National Family Week*. Mr. Wilson indicated that for the fifth year, the main activity to recognize and celebrate National Family week in Morgan Hill is a poster contest. All elementary and junior high schools have been invited to participate in the poster contest with the theme for this year *My Favorite Family Activity*. He stated that the winning posters will be placed on display in the Community Center from mid-November to mid-December.

Mayor Kennedy and Mayor for the Day Lacerda presented Barry Del Buono, President and CEO of the Emergency Housing Consortium, with a proclamation declaring November 14-20, 2004 as Hunger & Homelessness Awareness Week.

### **AWARDS**

Chris Hogg, representing the Morgan Hill Bicycle and Trails Advisory Committee, presented Deputy Director of Public Works Karl Bjarke with the *Morgan Hill Cycling and Trail Awareness Award* in recognition of his promoting bicycle riding as a means of reducing pollution and traffic problems in Morgan Hill.

### **CITY COUNCIL REPORT**

Council Member Tate congratulated everyone who was involved in the electoral process that took place on November 2, 2004. Now that the results are in, he felt that the City can move forward. He stated that the Council is looking forward to having Mark Grzan joining them and getting work done. He indicated that a week ago, the Council made a strong statement that the City would be moving forward with a new library. He said that the City has some items to worry about in terms of making sure that the library is made accessible as much as possible, noting that the library has been closed on Mondays due to lack of funding. He indicated that an existing parcel tax is due to expire, noting that a March 2004 ballot measure that would have extended the parcel tax was unsuccessful. He stated that the City/County is looking at placing another ballot measure to extend the parcel tax sometime in 2005. He said that citizen support is welcomed as he would hate to see the newly constructed library close during the week due to lack of operational funding. He stated that he recently rotated into the Council's Finance & Audit Committee. Now that the election is over, the Finance & Audit Committee will be reviewing the City's budget strategy. He indicated that the City adopted a budget strategy that states that there will be permanent structural cuts. The City has already implemented some of structural budget cuts. The budget strategy also states that the City will be making revenue enhancements, noting that the Council has not moved forward with this item. He stated that the Finance & Audit Committee is looking forward at having the Council's annual retreat in January and performing exercises to focus on how to proceed with the revenue enhancement piece of the budget strategy. On Monday, the Youth Advisory Committee (YAC) held a regular meeting. Part of this meeting was a presentation by Project Cornerstone who presented an opportunity for the YAC become involved with a *Neighborhood Connection* project. He stated that the YAC decided to get involved with this project that develops an intergenerational project in the community that promotes a caring neighborhood and for young people to feel valued. He stated that he is looking forward in working with YAC members on this project.

### **CITY MANAGER REPORT**

City Manager Tewes stated that the most recent monthly water testing results suggests that there is no evidence of the chemical perchlorate at levels of detection in any of the City's municipal water wells that are not already being treated with ion exchange, a procedure that removes perchlorate from the water.

### **CITY ATTORNEY REPORT**

City Attorney Leichter stated that she did not have a report to present this evening.

### **OTHER REPORTS**

Mayor Kennedy reported on the Indian Gaming Casino and the Sargent Ranch project. He stated that he and City Manager Tewes were recently invited to attend a meeting sponsored by the City of Gilroy to talk about the issues relating to a proposed Indian gaming casino to be located on Highway 25 near the Santa Clara County/San Benito County line. There is also a proposed project in the Sargent Ranch area located southwest of Gilroy. In attendance were representatives from the Cities of Gilroy, Hollister, Morgan Hill and San Juan Bautista, as well as representatives from the Santa Clara County Board of

Supervisors (Don Gage), Pat Loe from San Benito County; Steve Kinsella, President of Gavilan College; Edwin Dias, Gilroy Unified School District; a representative from the San Benito County School District; Sylvia Hamilton, San Martin; and Bernadette Arellano, representing Congressman Mike Honda's office. He stated that the purpose of the meeting was to place all issues on the table of what is being proposed. He stated that the group focused on asking the applicant and project proponents to provide definitions for the two projects. The committee would review associated impacts and mitigation measures (e.g., impacts to traffic, air, water, sewer quality; social impacts to jobs, schools and crime; impacts to local restaurants, hotels, and motels; loss of agricultural land, etc.). Should the project(s) move forward, all communities want to be at the table and have their concerns/issues represented. It was agreed that everyone needs to learn more about the gaming industry. He stated that the goals established at the meeting were: 1) the creation of a formal working coalition that would represent all affected communities; 2) assurance that the coalition works together for the benefit of the entire region; 3) agreed to get educated on the formal processes that would be followed through federal, state and other agencies in order to get a complete definition and information on both projects and their status. 4) This committee to be the provider of accurate information to the press and the public; creating forums to educate the public on these two projects. The group talked about a workplan in order to become educated on the process involving federal laws and legal implications. He stated that information was requested from Congressman Mike Honda's office. County Board of Supervisor Don Gage will provide information on the State requirements/implications. There was also discussion of a follow-up meeting to talk about the process. The group also talked about the possibility of establishing a memorandum of understanding, a preferred meeting location of Gilroy, and having Jay Baksa, Gilroy City Administrator, as the coordinator of the Committee. Press relations to be handled by Tony Bruscia, Mayor of Hollister. He stated that additional information would be provided to the public as it becomes available.

## **PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda. No comments were offered.

## ***City Council Action***

### **CONSENT CALENDAR:**

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Chang absent, **Approved** Consent Calendar Items 1-10 as follows:*

1.        **BI-ANNUAL VACANCY RATE SURVEY**

**Action:** **Established** the Bi-Annual Vacancy Rate for October 2004 as Recommended by the Planning Commission.

2.        **ANNEXATION APPLICATION, ANX-03-01: HILL-GERA**

**Action:** **Adopted** Resolution No. 5854, Approving Annexation.

3. **APPROVE CONSULTANT AGREEMENT AMENDMENT WITH HARRIS & ASSOCIATES FOR 2003/2004 PAVEMENT RESURFACING PROJECT**  
*Action: **Approved** Consultant Agreement Amendment with Harris and Associates for Providing Additional Construction Inspection Services for the 2003-2004 Pavement Resurfacing Project.*
4. **APPROPRIATE FUNDS FOR THE COYOTE CREEK TRAIL CONNECTION PROJECT**  
*Action: **Appropriated** \$12,000 From the Current Year Un-Appropriated Street Fund (202) Balance to Cover Non-Grant Related Costs Associated with This Project.*
5. **REJECTION OF BIDS FOR SANITARY SEWER ROOT TREATMENT ABATEMENT PROJECT**  
*Action: **Rejected** the Bid Received on October 14, 2004 for the Sanitary Sewer Root Abatement Project.*
6. **RESOLUTION AMENDING CITY'S CONFLICT OF INTEREST CODE REPORTING CATEGORIES**  
*Action: **Adopted** Resolution No. 5855, Amending the List of Positions Subject to the City's Conflict of Interest Code.*
7. **AWARD OF CONTRACT FOR THE 2004-2005 SIDEWALK, CURB AND GUTTER REMOVAL AND REPLACEMENT PROJECT**  
*Action: 1) **Awarded** Contract to QLM, Inc. for the Construction of the 2004-2005 Sidewalk, Curb and Gutter Removal and Replacement Project in the Amount of \$94,553; and 2) **Authorized** Expenditure of Construction Contingency Funds Not to Exceed \$9,457.*
8. **UPDATE ON DEVELOPMENT PROCESSING SERVICES STUDY IMPLEMENTATION**  
*Action: 1) **Accepted** Report on the Implementation Status of Development Processing Services Study Recommendations; and 2) **Directed** Staff to Report Back on the Implementation Status in May 2005.*
9. **JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF OCTOBER 20, 2004**  
*Action: **Approved** the Minutes as written.*
10. **SPECIAL CITY COUNCIL MEETING MINUTES OF OCTOBER 27, 2004**  
*Action: **Approved** the Minutes as written.*

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## ***Redevelopment Agency Action***

### **CONSENT CALENDAR:**

**Action:**        *On a motion by Agency Member Tate and seconded by Agency Member Carr, the Agency Board, on a 4-0 vote with Agency Member Chang absent, **Approved** Consent Calendar Items 11 and 12 as follows:*

**11.     RELEASE OF BID FROM ABCO CONSTRUCTION AND REJECT ALL BIDS FOR THE HISTORIC LaMALFA HOUSE MOVE**

**Action:** *1) **Released** ABCO Construction from their August 25, 2004 Formal Bid for the LaMalfa House Move Project; and 2) **Rejected** All Other Bids.*

**12.     AWARD PURCHASE ORDER FOR THE LaMALFA HOUSE MOVE PROJECT**

**Action:** *1) In Accordance with Section 3.04.150(A) of the City Municipal Code, **Determined** that the Competitive Bid Process for the LaMalfa House Relocation Project would not likely result in a Lower Price to the City from a Responsible Bidder and/or would Cause Unnecessary Expense or Delay of the Project; 2) **Approved** a Purchase Order in the Amount of \$37,000 with Kelly House Movers for Relocating the LaMalfa House; and 3) **Authorized** a \$6,000 Contingency Fund.*

**Action:**        *As the Council has an adopted policy of considering public hearings on or after 7:30 p.m. and it not yet being 7:30 p.m., the Council/Agency Board **agreed** to consider agenda item 17 at this time.*

## ***Redevelopment Agency Action***

### **OTHER BUSINESS:**

**17.     LOAN TO MILLENNIUM HOUSING**

Business Assistance and Housing Services Director Toy presented the staff report, indicating that the item before the Redevelopment Agency is the second step of a two step process to provide financing to Millennium Housing for the purchase of the Hacienda Mobile Home Park. He indicated that last week, the Redevelopment Agency took the first step of approving the issuance of tax exempt bonds by Independence Cities Lease Financing Authority on behalf of Millennium Housing to purchase the Park. At that meeting, the Agency Board requested that Millennium Housing make an effort to provide additional information to the residents regarding the purchase of the Park as well as providing an opportunity for the residents to meet with representative(s) to discuss their concerns, and receive answers to their questions. He informed the Council that a flier was distributed to all residents last Friday indicating that Millennium Housing would be holding the equivalent of office hours from 12:15 – 5:30 p.m. on Monday in the clubhouse. He indicated that City staff was in attendance from approximately 2:00 – 5:00 p.m. and met with approximately 30 individuals during this timeframe to discuss their issues, questions and concerns. He highlighted the key terms of the loan and provisions

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associated with the purchase of the Park. He noted that George Turk, president of Millennium Housing, was in attendance to answer questions that the Agency Board Members may have.

Vice-chairman Sellers noted that it was stated that Millennium Housing would not evict anyone from the Park should residents be unable to pay increased rents. If someone was unable to pay the increased rent and were evicted, he inquired as to the recourse the resident would have.

Mr. Toy stated that within the loan agreement, there is a provision that Millennium Housing could not evict a tenant because they were not able to pay the increased rent. One recourse would be for the evicted resident to come before the Redevelopment Agency and indicate the reason for eviction. The Agency would, in turn, talk to Millennium Housing. If evicted for inability to pay the increased rent amount, it would be considered a default of the agreement with Millennium.

Vice-chairman Sellers felt that it would be important to make the residents aware of their recourses.

Chairman Kennedy opened the floor to public comment

Earle Dart, long time resident of Hacienda Mobile Home Park, requested that the Council move forward with the time sensitive Millennium Housing proposal as it is in the best interest of the Park residents. He informed the Agency Board that most of the Park residents appreciate all that has been done by the City to protect them in past years and the thousands of dollars given to make needed upgrades to coaches.

Eleanor Sanford indicated that she moved to Morgan Hill six years ago from Santa Clara hoping to find a safe and secure place to live. She felt that it is apparent that rent control will be going away. She said that the property owner wants to charge more money, indicating that 2-3 years ago, he implemented a \$200 rent increase. The residents were able to raise \$10,000 to fight the lawsuit, resulting in a win for the residents. She felt that the owners will continue to pursue rent increases until cities refuse to fight and spend more money. If the owner does not sell to Millennium Housing, he will sell to someone else, possibly a developer. This would result in everyone losing their homes. She felt that Millennium Housing would provide the residents with a safe and secure deal for many years.

Ed Carr, a 29-year Hacienda Mobile Home Park resident, addressed rent increases that have occurred over the years and the difficulty of pursuing lawsuits. He requested that the City assist Millennium Housing with the purchase of the Park as the majority of the residents support its purchase.

Nancy Ackerman indicated that she moved to Hacienda Mobile Home Park five years ago as rent control was in place in Morgan Hill. She stated that she paid \$320 per month in rent at that time. The downside to rent control is that the park owner felt that he was not making money. Therefore, large dollars were not put into the park, resulting in the park looking rough around the edges. She said that many residents are pleased to hear that Millennium Housing will be purchasing the Park. She did not believe that \$30-\$40 per month rent increase was outrageous. She felt that having a maximum rent of \$590 per month is better than the \$900 per month being charged in Sunnyvale. She thanked the City for having rent control in place as it has made a difference.

John Liegl, speaking as a private citizen and spokesperson for the Hacienda Valley Mobile Estates homeowners, indicated that the homeowners voted 101-35 in favor of the purchase. He stated that 27 residents did not vote and one house was vacant. He felt that with the purchase of the Park by Millennium Housing would allow residents to steer their own course, making decisions on how they will be governed and be secure in their futures. He stated that the homeowners object to having a landowner who is distant and cannot make decisions that benefit the small community. The residents also object to having no voice and losing control over its future. He noted that Morgan Hill has suffered from an onslaught of law suits, the insecurity of rent control, the threat of conversion to apartments, condominiums or worse. He said that residents acknowledge the efforts and sacrifices the City has made in the past on the residents behalf. The residents know that this action will benefit other mobile home park residents in the future.

Bill Keig indicated that he moved to Morgan Hill in 1968 and that he has been a resident of the Hacienda Valley Mobile Estates for the past four years. He stated that he pays \$369.55 per month in rent at this time. As he understands the proposal, on February 1, 2005, his rent will increase by \$40 to \$409. In the succeeding four years, he will be paying \$409, \$449, \$489 and \$529 per month. He felt that the residents would face two risks by failing to move forward with Millennium Housing: 1) rent control could be overthrown by the courts. If this happens, it would increase rents by \$200 per month per unit. 2) Sale of the park by the owner to a private party. In this event, the increase could be anywhere from \$200-\$1,000 to evection. He urged the Council to approve the proposal.

Frances Thrailkill, a 21-year Hacienda Park resident, stated that she would not have been able to stay in the Park when she lost her husband as her income decreased by more than half. Therefore, it would be a hardship should the rent keep going up. She thanked the Council for all its help.

No further comments were offered.

**Action:** *On a motion by Agency Member Carr and seconded by Agency Member Tate, the Agency Board, on a 4-0 vote with Agency Member Chang absent, **Authorized** the Executive Director to do Everything Necessary to Execute the Required Agreements with Millennium Housing for a \$1.2 Million Loan, Including Making Modifications; Subject to Review and Approval by Agency Counsel.*

## ***City Council Action***

### **PUBLIC HEARINGS:**

#### **13. AGREEMENT AMENDMENT, DAA-03-09: NATIVE DANCER-QUAIL MEADOWS – *Ordinance No. 1701, New Series***

Planning Manager Rowe presented the staff report, recommending that the Council introduce an Ordinance approving the amendments, incorporating a two-year extension for the sale of custom lots.

Mayor Kennedy opened the public hearing.



Scott Schilling indicated that he would answer any questions that the Council has regarding the six, 1 acre custom lots to outside buyers.

No further comments being offered, the public hearing was closed.

**Action:** *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Chang absent, **Waived** the Reading in Full of Ordinance No. 1701, New Series, the Development Agreement Ordinance.*

**Action:** *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1701, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MMP-03-01: NATIVE DANCER – QUAIL MEADOWS (APN 779-02-014) (DA-03-09: NATIVE DANCER – QUAIL MEADOWS)** by the following roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Chang.*

**14. OUT OF URBAN SERVICE AREA REQUEST, OSR-04-01: HOLIDAY-CORBIN – Resolution No. 5856**

Planning Manager Rowe presented the staff for a request to extend city sewer connection to property located on Holiday Drive. Staff recommended Council approval of the request by adoption of a resolution.

Mayor Kennedy recollected that the City typically includes a condition that requires the applicant agree to annex to the City as part of the approval of sewer connection.

Mr. Rowe stated that in order to extend City services, the City's code requires that the property owner enter into a sewer annexation agreement, a recorded document that includes a provision that stipulates that the property owner and successors in interest would agree not to protest the annexation of property anytime in the future should the opportunity present itself to bring the land into the City. He indicated that this condition could be added to the resolution.

Mayor Kennedy recommended that Section 6 be amended to add the statement: "The applicant agrees to annexation, should the City request it."

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:** *On a motion by Council Member Carr and seconded by Council Member Tate, the City Council, on a 4-0 vote with Council Member Chang absent, **Adopted** Resolution No. 5856, adding Section 6, subsection 5 to the resolution to state that the applicant agrees to annexation, should the City request it.*

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**15. OUT OF URBAN SERVICE AREA REQUEST, OSR-04-02: MONTEREY-SUH –  
*Resolution No. 5857***

Planning Manager Rowe presented the staff report for a request to extend sewer to property located on Holiday Drive. Staff recommended approval of a resolution that would allow for sewer connection. He informed the Council that this property is already in the City limits and would not require the condition that was placed on the prior resolution.

Mayor Kennedy opened the public hearing.

Scott Schilling indicated that an existing swale exists behind the new house location that is prone to flooding the area. He indicated that this section of the home is within the 100-year flood plain. He stated that the new home location will be right up to Monterey Road, noting that there are 3-4 existing homes being served by City sewer. It was his belief that City sewer was approved for these homes because of the flood plain issue and the location of the swale. He has been conducting a lot of work with the Water District and that they will be taking the full right of way for the PL566 channel. As part of the grading, he will be digging a portion of the channel to its full width with the first phase of the project. When the channel is completed, it will more than likely eliminate a significant portion of the area from the flood plain and alleviate the flooding problem.

No further comments being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Chang absent, Adopted Resolution No. 5857.*

**16. ZONING AMENDMENT, ZA-04-19: TEXT AMENDMENT TO THE SUBDIVISION ORDINANCE – *Ordinance No. 1702, New Series***

Planning Manager Rowe presented the staff report, indicating that the Council requested that staff amend the subdivision ordinance to no longer require an automatic Council review of Planning Commission approved tentative maps. He said that although the ordinance amendment would eliminate the automatic review of Planning Commission approved tentative maps, the Council can still appeal, review the conditions, and consider the approved tentative map(s).

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Chang absent, Waived the Reading in Full of Ordinance No. 1702, New Series.*

**Action:**        *On a motion by Council Member Carr and seconded by Council Member Tate, the City Council Introduced Ordinance No. 1702, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING TITLE 17, CHAPTER 17.20 OF THE MORGAN HILL MUNICIPAL***

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***CODE, THE SUBDIVISION ORDINANCE, REPEALING SECTION 17.20.110, REQUIRING CITY COUNCIL REVIEW OF TENTATIVE SUBDIVISION MAPS*** by the following roll call vote: *AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Chang.*

#### **FUTURE COUNCIL-INITIATED AGENDA ITEMS**

Council Member Sellers noted that the City has a relationship with the Community Foundation and the Morgan Hill Medical Health Foundation who have come before the Council and made presentations; advising the Council of their activities, expenditures, etc. He requested that the Aquatics Foundation provide the Council with a similar presentation at the next Council meeting or as soon as possibly convenient.

#### **ADJOURNMENT**

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 7:59 p.m.

**MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, CITY CLERK/AGENCY SECRETARY**